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No. 298

In the Supreme Court of the United States

OCTOBER TERM, 1962

CHARLES M. LAND, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The findings of fact and conclusions of law of the district court are reported at 187 F. Supp. 521. The opinion of the court of appeals (Pet. 16–25) is reported at 303 F. 2d 170.

JURISDICTION

The judgment of the court of appeals was entered on July 9, 1962. (Pet. 25.) The petition for a writ of certiorari was filed on August 6, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a restriction upon the sale of a partnership interest reduces its value for estate tax purposes not-

withstanding that the restriction expired upon the partner-decedent's death.

STATUTES AND REGULATIONS INVOLVED

Internal Revenue Code of 1954

SEC. 2001 [26 U.S.C. 2001]. RATE OF TAX.

A tax computed in accordance with the following table is hereby imposed on the transfer of the taxable estate * * *.

* * * * *

SEC. 2031 [26 U.S.C. 2031]. DEFINITION OF GROSS ESTATE.

(a) *General.*—The value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States.

* * * * *

SEC. 2033 [26 U.S.C. 2033]. PROPERTY IN WHICH THE DECEDENT HAD AN INTEREST.

The value of the gross estate shall include the value of all property (except real property situated outside of the United States) to the extent of the interest therein of the decedent at the time of his death.

Treasury Regulation on Estate Tax (1954 Code):

SEC. 20.2031-1 *Definition of gross estate; valuation of property.*

* * * * *

(b) *Valuation of property in general.* The value of every item of property includible in a decedent's gross estate under sections 2031

through 2044 is its fair market value at the time of the decedent's death, except that if the executor elects the alternate valuation method under section 2032, it is the fair market value thereof at the date, and with the adjustments, prescribed in that section. * * *

SEC. 20.2033–1 *Property in which the decedent had an interest.*

(a) *In general.* The gross estate of a decedent who was a citizen or resident of the United States at the time of his death includes under section 2033 the value of all property, whether real or personal, tangible or intangible, and wherever situated, beneficially owned by the decedent at the time of his death, except real property situated outside of the United States. * * *

* * * * * *

STATEMENT

The material facts, as contained in the findings of fact and conclusions of law of the district court (R. 55–67) and the opinion of the court of appeals (Pet. 16–25), may be summarized as follows:

The decedents, Robert Land and John Robert Land, were father and son. Robert Land died testate on August 24, 1955; John died testate on January 5, 1955. (R. 56, Pet. 17.) Until the dates of their respective deaths, the decedents were members of a family partnership, Land Brothers & Company, which was formed in 1939 to engage in the general merchandise business in Melvin, Alabama. The partnership agreement provided that any member of the partnership could purchase any retiring partner's interest at a

price limited to two-thirds of its net asset value. This limitation was expressly inoperative in connection with the purchase of a decedent partner's interest; the agreement provided that the purchase price in the event of such sale was full net asset value. The agreement also provided that in the event the surviving partners declined to purchase the decedent's interest, the partnership was to be dissolved and its assets liquidated and distributed. (R. 57–61, Pet. 17.)

On the estate tax return filed for each decedent, his respective partnership interest was valued at two-thirds of its net asset value as of the date of death. A deficiency assessment for estate tax was made against each estate on the ground that each partnership interest should have been valued at the full fair market value as the date of the respective decedent's death.[1] In each instance, the executors paid the assessment and sued for refund. The district court entered judgment for the taxpayer-executors, holding that the partnership interests were properly valued at two-thirds of net value. The court of appeals reversed, holding that a restriction on the sale price of a partnership interest that expires upon the death of a partner has no effect on the valuation of that interest for estate tax purposes. (R. 56–57, 63–67, Pet. 17–25.)

ARGUMENT

The decision below is correct. There is no conflict in decisions, and no warrant for further review.

[1] There is no dispute as to the fair market value of each decedent's interest in the partnership at the time of death. (R. 61–62, Pet. 17.)

1. The court of appeals correctly held that the partnership interest of each decedent constituted "property" includible in his gross estate under the provisions of Section 2033 of the Internal Revenue Code of 1954, *supra*, p. 2, and that the tax imposed on such estate is measured by the value, as of "the instant of death," of the property transferred by reason of death (Pet. 19). The federal estate tax is "an excise imposed upon the transfer of or shifting in relationships to property at death" (*U.S. Trust Co.* v. *Helvering*, 307 U.S. 57, 60) and "the measure of the tax is the value of the transferred property at the time when death brings it into enjoyment." *Helvering* v. *Hallock*, 309 U.S. 106, 111. See also *Fidelity Co.* v. *Rothensies*, 324 U.S. 108, 111; *Commissioner* v. *Estate of Field*, 324 U.S. 113, 116; *Chase Nat. Bank* v. *United States*, 278 U.S. 327, 337. See also, *Goodman* v. *Granger*, 243 F. 2d 264 (C.A. 3), certiorari denied, 355 U.S. 835.[2]

[2] There the court explained (243 F. 2d at 268–269):

"Since death is the propelling force for the imposition of the tax, it is death which determines the interests to be includible in the gross estate. Interests which terminate on or before death are not a proper subject of the tax. Assets may be acquired or disposed of before death, possibilities of the loss of an asset may become actualities or may disappear. Upon the same principle underlying the inclusion of interests in a decendent's gross estate, valuation of an interest is neither logically made nor feasibly administered until death has occurred. The taxpayer's theory of valuing property before death disregards the fact that generally the estate tax is neither concerned with changes in property interests nor values prior to death. The tax is measured by the value of assets transferred by reason of death, the critical value being that which is determined as of the time of death."

In the instant case the death of each decedent, by operation of the explicit terms of the partnership agreement, extinguished the restriction respecting the value of his partnership interest for the purpose of sale, during his life, to the remaining partners. Under the terms of that agreement, surviving partners could purchase the interest of a deceased partner only at its full fair market value. As the court of appeals held (Pet. 17), "A restriction on the value of a partnership interest that expires at the decedent's death cannot affect the valuation of the interest for estate tax purposes." See *Goodman* v. *Granger, supra; May* v. *McGowan*, 194 F. 2d 396 (C.A. 2); *Newell* v. *Commissioner*, 66 F. 2d 102 (C.A. 7); *Knipp's Estate* v. *Commissioner*, 244 F. 2d 436 (C.A. 4).

2. There is no conflict of decisions. *Lomb* v. *Sugden*, 82 F. 2d 166 (C.A. 2), as the court of appeals observed, is not in point. There (Pet. 24) "it was decisive that the maximum price realizable by the estate was the option price, because the optionees having the right to buy could and probably would buy at the reduced value—before or after death of the decedent. Not so here. Here the option to sell at the reduced price had expired, and there is no reason to assume that the executors would sell below the fair market value." In short, contrary to the situation in the instant case, the restrictive agreement in *Lomb* v. *Sugden* did not expire at the death of the decedent and was binding upon her estate. See also *Wilson* v. *Bowers*, 57 F. 2d 682 (C.A. 2).

Nor is there any conflict (Pet. 2) with this Court's pronouncements in *Knowlton* v. *Moore*, 178 U.S. 41; *Y.M.C.A.* v. *Davis*, 264 U.S. 47; and *Edwards* v. *Slocum*, 264 U.S. 61. None of these cases involved the valuation of property for estate tax purposes; and, as the court of appeals here pointed out in its comment on *Edwards* v. *Slocum*, this Court's observations on the nature of the estate tax were made (Pet. 18) "simply to distinguish it from a succession tax, which is calculated and graduated on the individual portion of the estate each heir or legatee receives rather than on the aggregate property passing from the decedent."[3]

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[3] The result in the instant case is not out of harmony with *Estate of Matthews* v. *Commissioner*, 3 T.C. 525, and *Estate of Giannini* v. *Commissioner*, 2 T.C. 1160, affirmed without discussion of this point, 148 F. 2d 285 (C.A. 9), certiorari denied, 326 U.S. 730. In those cases, during the decedent's lifetime there was no agreement in effect restricting the sale price of the property involved. The restrictive price agreement became operative upon the decedent's death. The courts disregarded the restrictive price, thus holding that the property was includible in the gross estate at its full value, on the ground that the decedent had full domain over the property during his lifetime and could have disposed of it as he saw fit. As the court below explained this rationale (Pet. 22–23), when a decedent is free to dispose of his property without restriction during his lifetime, "his inaction constitutes a passive transfer of an interest in the property to the person who stands to benefit by the limitation on the value of the property passing to the decedent's heir or legatee."

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 1962.